IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8429 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MAHENDRABHAI R DAMANI

Appearance:

1. Special Civil Application No. 8429 of 2002

MR HD DAVE ASSTT GOVERNMENT PLEADER for Petitioner No. 1

MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 28/04/2003

ORAL JUDGEMENT

#. Heard learned AGP Mr.H.D.Dave appearing on behalf of the petitioner and learned advocate Mr.K.M.Paul for respondent workman.

#. The petitioner has challenged the award passed by the Labour Court, Rajkot in Reference No.278 / 1992 dated 9th January, 2002 wherein the labour court has granted reinstatement with continuity of service without backwages of the interim period. Learned AGP Mr.H.D.Dave for the petitioner submitted that the respondent workman had not worked continuously from the date of joining till the date of termination and in between, there was gap and his services was not continued and therefore, he had not completed continuous service of 240 days continues service and that is how, he is not entitled to any benefit of Section 25-F of the I.D.Act. He also submitted that in case if the workman has not completed service of 240 days continuously and if there is any break in between in a period of one year, the workman is disentitled to benefit under Section 25-F of the I.D.Act, 1947. He also submitted that a specific contention was raised by the petitioner before the labour court that the establishment has been closed down even though that was not considered by the labour court. He also raised contention that there is gross delay of seven years in rasing the dispute by the respondent workman and even though that has not been taken into account by the labour court and granted relief in favour of the respondent workman. He also submitted that the labour court has committed gross error in granting relief to the workman and therefore, some interference is necessary by this Court.

#. Learned advocate Mr.K.M.Paul appearing on behalf of the respondent workman has submitted that termination of the respondent workman is dated 30th April, 1983 and therefore, provisions of Section 2[oo][b]] are not applicable and the said provisions having no retrospective effect as per the decision of this Court in case of Bharat Heavy Electrical Works Ltd. V. R.V.Krishnarav reported in 1989 [2] GLR 1. So far as the contention that the establishment was already closed, it is submission of learned advcoate Mr.Paul that no documentary evidence, written or oral evidence produced by the petitioner before the labour court. So far the delay aspect is concerned, it is submitted that the labour court has rightly appreciated the fact that the workman is not entitled to any amount of backwages because there is delay of seven years. Therefore, delay aspect has been taken into account by the labour court while granting the relief. He also submitted that merely delay occurred in rasing the disputed after some time that does not mean that the dispute is ceased but it remains in existence so that the labour court should have

to consider whether on the date on which the dispute has been raised, is the dispute survived or not ? He also submitted that the labour court has not committed any error while granting such relief and therefore, no interference of this Court is necessary.

#. I have considered submissions made by the learned advocates for the parties. I have also perused the award impugned in the present petition. It has come on record that the respondent workman was appointed on 22nd April, 1982 and remained in service upto 30th April, 1983. No doubt, the workman was appointed periodically by the petitioner but fact remains that this periodical appointment remained in continues service and the workman had completed 261 days as per the document produced by the petitioner. This fact is discussed by the labour court in its award at page.12 and 20 wherefrom it transpires total working days as produced by the petitioner from 28th May, 1982 to 29th APRIL, 1983, which in all comes to 261 days. Therefore, prior to date of termination, in preceding 12 months, as seen, the workman had completed continues service of 240 days and therefore workman is entitled to benefits of Section 25-F of the I.D.Act, 1947. Learned AGP Mr.H.D.Dave also submitted that in each periodical order, there was some gap in between and therefore, it cannot be considered to be continues service. This submission is having clear answer from the statutory provisions itself. If provisions of Section 25-B [2] of the I.D.Act, 1947 is read, which clearly makes it clear that where a workman is not in continues service within the meaning of Cl.[1] for a period of one year or six months, he shall be deemed to be in a continuous service under an employer, [a] for a period of twelve calender months preceding the date with reference to the calculation is to be made, as actually worked under the employer. Section 25-F has also deal with one year continues service and if the workman has completed 240 days continues service, the workman concerned is entitled to benefit of Section 25-F of the Act. Therefore, the labour court has come to the conclusion that looking to the undisputed facts between the parties and the fact that though there were periodical appointments in a preceding 12 months from the date of termination, on that occasions, Section 2[oo][bb] was not in statute book and the same came into being from 18th August, 1984. The view taken by the Division Bench of this Court in case of Bharat Heavy Electrical Ltd. v. R.V.Krishnarao reported in 1989 [2] GLR 1, wherein it is clearly held that the effect of Section 2[oo][bb] having no retrospective effect and it cannot cover earlier termination from the date of effect. Therefore, in my

opinion, this aspect has been rightly considered by the labour court in its award at page.17 and rightly observed that this amendment is not applicable to the facts of this case. In respect of the contention about the establishment is closed down, the labour court has observed that for that, the petitioner has not produced any documentary evidence nor led any oral evidence before the labour court and hence, this fact was not believed by the labour court. In respect of the delay, the labour court has not granted any amount of backwages. The view taken by the Apex Court in case of MAHAVIR SINGH VS. U.P.STATE ELECTRICITY BOARD reported in 1999 [2] CLR 7 wherein even in case of delay of nine years of that case, it is held by the Apex court that the reference was made by the concerned authority and merely delay does not cease the dispute but delay can be taken into account by the labour court at the time of granting of the relief to the workman and the labour court should first adjudicate the dispute and delay aspect can be taken care of at the time of granting the relief in favour of the workman. In above view of the matter, the labour court rightly seems to have not granted any amount of backwages which in my opinion, the labour court has rightly appreciated the documentary as well as oral evidence led before the labour court. For that, the labour court has not committed any error while passing the award. As such, no procedural irregularity committed by the labour court and even when two views are possible, this Court cannot interference with the award. Therefore, the labour court has not committed any error and therefore, in my opinion, there is no substance in this petition, nor there seems any infirmity which required any interference of this Court in any way while exercising the jurisdiction under Article 226 and 227 of the Constitution.

Therefore, there is no substance in this petition and the same deserves to be dismissed.

In view of above discussion, present petition is rejected accordingly. Rule stands discharged. Interim relief, if any, stands vacated. No order as to costs.

Date : 28-4-2003 [H.K.Rathod, J.]

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